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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ARISTA NETWORKS, INC.,

Plaintiff,

v.

CISCO SYSTEMS, INC.,

Defendant.

Case No. 5:16-CV-00923-BLF

**ARISTA NETWORKS, INC.'S
RESPONSE TO CISCO SYSTEMS,
INC.'S *DAUBERT* MOTION TO
EXCLUDE THE EXPERT OPINION
OF JOHN R. BLACK, JR.**

Date: May 3, 2018

Time 9:00 A.M.

Judge: Hon. Beth Labson Freeman

Dept: Courtroom 3

DEMAND FOR JURY TRIAL

REDACTED VERSION OF DOCUMENT SOUGHT TO BE SEALED

1 Cisco's motion to exclude the testimony of Arista's technical expert Dr. John Black seeks to
 2 exclude only two of Mr. Black's opinions: 1) "opinions relating to whether Cisco's CLI is a *de facto* or
 3 informal industry standard"; and 2) "opinions on corporate intent or beliefs of others." D.I. 216-4 at 2.
 4 Arista responds as follows.

5 First, to the extent that Cisco does not open the door by presenting the opinion of its technical
 6 expert, Dr. Kevin Almeroth, that Cisco's CLI is *not* an industry standard, Arista will not seek to present
 7 at trial any opinion from Dr. Black as to whether Cisco's CLI is a "standard," *de facto* or otherwise.
 8 Cisco's Dr. Almeroth has admitted that his opinion that the CLI is not a standard (*see, e.g.*, Ex. 31 (2/2/18
 9 Almeroth Report, ¶¶ 90-106)) is not based on any objective threshold or quantitative methodology; Ex.
 10 32 (2/9/18 Almeroth Dep. at 93:12-14 (" [REDACTED]
 11 [REDACTED]")). As such, it should
 12 be excluded to the same extent as Dr. Black's opinions on this topic. Instead, as the Court expressly
 13 allowed in its *Daubert* Order in the copyright trial, Dr. Black will "opine on the underlying facts and
 14 analysis, such as the features and vendors he had reviewed and whether certain usage is common or
 15 frequent." *Cisco Systems Inc. v. Arista Networks, Inc.*, No. 14-cv-5344-BLF, Order on *Daubert* Motions,
 16 D.I. 661 at 4 (N.D. Cal. Nov. 16, 2016) ("*Daubert* Order"). To be clear, Dr. Black will provide his
 17 analysis of the extensive evidence that Cisco was aware that its CLI was in widespread use by other
 18 vendors throughout the industry, acquiesced in that use, and even encouraged that use. That is a core
 19 aspect of Cisco's "open early, closed late" conduct that is an antitrust violation. For example, Dr. Black
 20 will testify on [REDACTED]
 21 [REDACTED]
 22 [REDACTED]. While some of the internal
 23 Cisco documents on which Dr. Black will offer his opinions use the term "standard," that is Cisco's
 24 wording. Dr. Black will use those documents, among others, to establish the above facts but will not,
 25 and does not need to, opine that Cisco's CLI was a *de facto* standard.

26 Second, Arista will not seek to present at trial any opinion regarding corporate intent or beliefs
 27 of others. Instead, as the Court expressly allowed in its *Daubert* Order in the copyright trial, Dr. Black
 28 will present his analysis of the evidence he reviewed "to determine whether Cisco CLI has become

common in the industry,” for example, internal and external Cisco documents acknowledging and promoting that fact.

Dated: March 28, 2018

Respectfully submitted,

/s/ Matthew D. Powers

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